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THOMAS P. MAZZUCCO  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

16 INNOVATION VENTURES, LLC and LIVING  
17 ESSENTIALS, LLC,

12 Civ. 5523 (WHA)

18 Plaintiffs,

**STIPULATION AND ORDER**

19 -against-

20 PITTSBURG WHOLESALE GROCERS, INC.,  
21 d/b/a PITCO FOODS, et al.,

22 Defendants.


23 UPON THE STIPULATION AND AGREEMENT by and between the undersigned counsel  
24 for Plaintiffs Innovation Ventures, LLC, and Living Essentials, LLC, (together, "Plaintiffs"), and  
25 counsel for defendants Dan-Dee Company, Inc.; Fadi Attiq; and Kevin Attiq (collectively, the "Dan-  
26 Dee Defendants"), it hereby is ORDERED as follows:


1           1.     The Dan-Dee Defendants acknowledge having been served with the following  
2 documents and waive any defenses as to personal or subject matter jurisdiction with respect to these  
3 documents: Summons and Complaint; Order to Show Cause for a Temporary Restraining Order and  
4 Preliminary Injunction, including the supporting Declarations and Memorandum of Law; and  
5 Seizure Order.  
6


7           2.     For purposes of this stipulation, the "5 HOUR ENERGY Marks" are:

- 8           •     "5 HOUR ENERGY" (Registration No. 3,003,0770);
- 9           •     "5-HOUR ENERGY" (Registration No. 4,004,225);

- 10           •      (Registration No. 4,104,670);

- 11           •      which includes the wording "5-hour ENERGY" in black outlined in  
12 yellow, below which are the words "EXTRA STRENGTH" in yellow, along with  
13 a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent  
14 to an uneven landscape, with the sky depicted in transitioning colors from black to  
15 red as the sky meets the landscape (Registration No. 4,116,951);

- 16           •     , commonly referred to as "Running Man," (Registration No. 3,698,044);  
17 and  
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- 19           •      which includes the wording "5-hour ENERGY" in black outlined in  
20 yellow, along with a person in black silhouette, outlined in yellow, shown in an  
21 athletic pose adjacent to an uneven landscape, with the sky depicted in  
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transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4.120,360).

3. The Dan-Dee Defendants and their agents, servants, and employees pending the final hearing and determination of this action are preliminarily enjoined from:

(a) using any of the 5 HOUR ENERGY Marks on any product whether genuine, counterfeit or re-packaged, or any marks confusingly similar thereto in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;

(b) using any logo, trade name or trademark confusingly similar to any of the 5 HOUR ENERGY Marks which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of the Dan-Dee Defendants or of others are sponsored by, authorized by or in any way associated with Plaintiffs;

(c) infringing any of the 5 HOUR ENERGY Marks;

(d) falsely representing themselves as being connected with Plaintiffs or sponsored by or associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers and/or members of the purchasing public to believe that they or the other defendants are associated with Plaintiffs;

(e) using any reproduction, counterfeit, copy, or colorable imitation of any of the 5 HOUR ENERGY Marks in connection with the publicity, promotion, sale, or advertising of dietary supplements;

(f) affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being 5-Hour ENERGY® and from offering such goods in commerce;

1 (g) diluting any of the 5 HOUR ENERGY Marks;

2 (h) buying, selling, transferring (other than to Plaintiffs or law enforcement officials),  
3 altering, or destroying any products with the 5 HOUR ENERGY Marks;

4 (i) destroying any records documenting the manufacture, sale, offer for sale, distribution,  
5 advertisement or receipt of any product purporting to be 5 HOUR ENERGY®; and  
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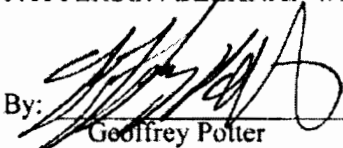

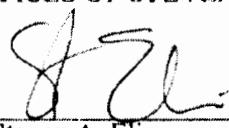
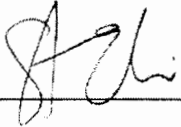
7 (j) assisting, aiding or abetting any other person or entity in engaging in or performing  
8 any of the activities referred to in subparagraphs (a) through (j) above.

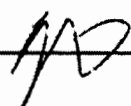
9 4. The Dan-Dee Defendants and their agents, servants, and employees do not admit any  
10 of Plaintiffs' charging allegations against any of them and do not waive any defense, affirmative  
11 defense, claim, counter-claim, cross-claim, other interposition of any argument or doctrine or any  
12 legal right or prerogative otherwise afforded to them by law or in a proceeding in equity.  
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14 5. Signatures transmitted electronically or by facsimile shall be deemed original.  
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1 Dated: November 7, 2012

2 **CONSENTED AND AGREED TO BY:**

3		
4		
5		For: Dan-Dee Company, Inc.
6		
7		
8		Kevin Attiq
9		
10		
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28		Attorneys for Kevin Attiq
		By: 
		Attorneys for Fadi Attiq



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SO ORDERED:

UNITED STATES DISTRICT COURT



A handwritten signature in black ink, consisting of stylized, overlapping letters.

CERTIFICATE OF SERVICE

I, Tanya L. Hill, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 14, 2012, I served the following document(s) on the parties in the within action:

STIPULATION AND ORDER RE DAN DEE

	<b>BY MAIL:</b> I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as follows:
	<b>BY HAND:</b> The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
	<b>VIA FACSIMILE:</b> The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:
X	<b>VIA E-MAIL:</b> Based on a court order or an agreement of the parties to accept service by e-mail, I attached the above-described document(s) to an e-mail message, and invoked the send command to transmit the e-mail message to the person(s) at the following e-mail address(es). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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MANOUCHEHR HEIKALA aka DAVID  
HEIKALI; and AZIZ HEIKALI aka ED  
HEIKALI

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
22 a true and correct statement and that this Certificate was executed on November 14, 2012.

23  
24 By   
Tanya L. Hill  
25  
26  
27  
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